



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

SEP - 4 1998

Mr. Gordon Rousseau  
HMT Associates, L.L.C.  
1850 K Street, N.W.  
Suite 200  
Washington, D.C. 20006-3500

Ref. No. 98-0233

Dear Mr. Rousseau:

This is in response to your letter dated May 1, 1998, regarding the transportation of intermediate bulk containers and/or portable tanks that contain residues of hazardous materials under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether a portable tank which contains a residue of a hazardous material may be transported under the terms of an expired exemption.

The answer is no. The offering for transportation or transportation of a hazardous material under the terms of an expired exemption is a violation of the HMR. Section 173.29 provides that a packaging containing only the residue of a hazardous material shall be offered for transportation and transported in the same manner as when it previously contained a greater quantity of that hazardous material.

An empty packaging is not subject to the HMR if it: 1) is unused; 2) is sufficiently cleaned of residue and purged of vapors to remove any potential hazard; 3) is refilled with a material which is not hazardous to such an extent that any residue remaining in the packaging no longer poses a hazard; or 4) contains the residue of certain hazardous materials specified in § 173.29. Therefore, unless your packaging meets any of these criteria, you must transport it as if it contained a greater quantity of hazardous material.

I hope this answers your inquiry. If we can be of further assistance, please contact us.

Sincerely,

Delmer F. Billings  
Chief, Standards Development  
Office of Hazardous Materials Standards

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Friday, May 1, 1998

Ms. J. Suzanne Hedgepeth  
Director, Office of Hazardous Materials Exemptions & Approvals  
Research & Special Programs Admn.  
Department of Transportation  
400 7th Street  
Washington, DC 20590

Dear Ms. Hedgepeth:

This letter is to confirm a recent response that I gave to a person needing to return portable tanks of the IBC-type under exemption that contained a residue of hazardous material, which material had been loaded into the tank when the applicable exemption was still valid. The exemption had since expired. The incident caused me to think that when all the IBC-type portable tank exemptions expire on September 30, 1998, this could become a frequently recurring problem. I expect that DOT might well receive a number of phone calls from exemption portable tank users seeking to return the tanks to the originating shipper. It would seem advantageous to be prepared to handle these inquiries.

This is what I wrote:

"The DOT regulations state, in 49 CFR § 173.29(a), that a container that has residue of hazardous material must "be offered for transportation and shipped in the **same manner as when** it previously contained" that material. By the phrase "same manner" and the word "when", DOT fixes the rules that are to be applied *within a time frame*, i.e., the rules in effect at the time of the original shipment. Many years ago DOT recognized this difficulty which I believe is the reason the regulation is written the way it is. In a sense, it is a built-in grandfather clause for "empty" containers being returned or shipped for disposal which otherwise would become a constant problem.

"An exemption is considered to be a regulation by DOT. In the case of an expired exemption which is no longer valid, therefore, a container filled and shipped under its terms when it was valid can be shipped as an "empty" container after the exemption has expired. DOT does not permit, however, the addition of any material into the tank."

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MAY 1 1998  
11:30 AM  
HMT ASSOCIATES, L.L.C.

J. Suzanne Hedgepeth  
Research & Special Programs Admn.  
Friday, May 1, 1998  
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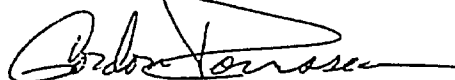
A similar situation occurred under HM-181 where, effective October 1, 1993, DOT changed a number of shipping names and some classifications. When the regulations requiring the new shipping names became effective, DOT received a number of inquiries about what to do about "empty" drums being returned to or by reconditioners, marked with a previous name which was no longer appropriate for the material in the drum. Would labeling and markings have to be changed to meet the new requirements? DOT responded that for return of empty drums containing residue under § 173.29, such drums did not have to be remarked or re-labeled under the new rules for the reasons given above.

It would be consistent for the same approach to be followed with IBCs. In other words, the condition of the package when it was filled *and* shipped is the controlling circumstance to determine compliance for its return as an "empty" packaging. In the drum situation, the original regulation was no longer in the CFR, it no longer existed, it had *expired* so to speak. In a similar manner, like the regulation, the exemption is no longer "in the book", it has expired. Thus, the movement is not a shipment under the exemption, but like the drums in 1993, is a movement governed by the regulation (or exemption) *that was in effect at the time of shipment* as is specified by 173.29. Otherwise, DOT would need to consider renewing all the exemptions for possible return or disposition of so-called "empties".

This application, of course, is limited only to portable tanks (IBC-type) that are being shipped or transported under § 173.29. Insofar as we are endeavoring to prepare for the September 30, 1998 expiration date, should you have any question regarding this approach or if I have mis-read DOT's intent, please let me know as soon as possible. Otherwise, I will assume we can plan on advising inquirers as I indicated in the text I quoted above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon Rousseau", with a stylized flourish at the end.

Gordon Rousseau